

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	DOCKET NO.: PT-1995-53
)	
Appellant,)	
)	
-vs-)	
)	
ROBERT & MARIETTA PFISTER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	ORDER AND OPPORTUNITY
Respondents.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 12th day of May, 1997, in the City of Missoula, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The Department of Revenue (DOR), represented by Tax Counsel Milo Vukelich, Staff Forester Randy Pierson, and Montana Department of Transportation Staff Attorney Peter J. LaPanne, presented testimony in support of the appeal. The taxpayers, represented by Robert Pfister and Thornton Liechty of the Montana Forest Owners Association, presented testimony in opposition thereto. At this time and place, testimony was presented, and exhibits were received. The Board allowed the record to remain open for

a period of time for the purpose of receiving post-hearing submissions. Having received post-hearing submissions from the taxpayers and from the DOR, the Board then took the cause under advisement. The Board having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it for its consideration by all parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as follows:

Land only comprised of 17.64 acres in
Section 11, Township 13 North, Range 17
West, County of Missoula, State of Montana.
(DOR identification number 5877305).

3. For the 1995 tax year, the DOR appraised the subject land at a value of \$26,355.

4. The taxpayers appealed to the Missoula County Tax Appeal Board on August 30, 1995, requesting forest land

classification, stating:

This land has been forest land prior to reclassification. Did not get included following application dated 11/10/94 - rejected by Pierson 3/16/95 based on inaccurate plat maps - have filed property review form for reconsideration. This land is still timberland and should be reclassified as such!

5. The county board, in its undated decision, stated:

The Board decided to support the appellant (sic). The state administrative rule states that interruptions (trails, roads, etc.) of less than 120' in width should not be considered as a break in the contiguous nature of Forest lands while the Highway 200 right of way is 200' wide. Testimony showed that timber could be grown and harvested inside the right of way easement.

The question then becomes whether the highway proper and the space needed for safety is more or less than 120', testimony conflicted on this point. Whether or not the interruption of Highway 200 is more or less than 120' wide is a very close call and subject to interpretation depending on what is considered necessary for safety. The board ruled in favor of the appellant as a matter of philosophy based on the testimony presented and that the taxpayer is actively harvesting timber on a regular basis.

6. On November 24, 1995, the Department of Revenue then appealed that decision to this Board, stating:

The nature of the proof adduced at the hearing was insufficient, from a factual and a legal standpoint, to support the Board's

decision.

DEPARTMENT OF REVENUE'S CONTENTIONS

The subject property consists of 17.64 acres located near Bonner, Montana. The issue in this appeal is whether or not the area comprising Highway 200 and its required "clear zone" should be deducted from that acreage amount.

The property contains a new section of Montana Highway 200, the former railroad bed for the Chicago, Milwaukee, St. Paul, and Pacific Railroad, a former section of Montana Highway 200, (now renamed "Rainbow Bend Road), and access easements.

The DOR's position is that the nonforest corridor created by Montana Highway 200 is not eligible to be classified as forest land. The DOR has classified the subject land as Class 4 property (residential land) because the presence of Montana Highway 200 has created non-forest land. Class 4 property is appraised at fair market value. This non-forest land results in the DOR position that the taxpayers own less than the required 15 contiguous acres of forest land specified in Section 15-44-102 (5), MCA:

"Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been

removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

- (a) that has not been converted to another use; and
- (b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.

The DOR contends that the nonforest corridor created by Montana Highway 200 is 138 feet at one point to 142 feet at another at its narrowest points. Nonforest areas that are greater than 120 feet in width and which are at least 5 acres in size cannot be considered to be forest land, according to the DOR.

The highway easement is approximately 200 feet in width and 860 feet in length. Of the 200 foot easement, an approximately 140 foot timber free corridor has been created as a clear zone and paved area of Highway 200. The DOR has determined the amount of nonforest acreage to be 2.767 acres (the nonforest width, 140', was multiplied by the length of the total easement, 860', and divided by the number of square feet in an acre, 43,560). 17.64 acres minus 2.767 acres equals 14.873 acres, which causes the total qualifying acreage to fall below the required 15 acres.

TAXPAYER'S CONTENTIONS

The taxpayers contend that the clear zone limits for Highway 200 are 65 feet for a length of approximately 860 feet. The cited source for this contention is a May 9, 1997 letter from Darin D. Kaufman, district traffic engineer, for the Missoula office of the Montana Department of Transportation.

They further contend that the subject 17.64 acres actively produces timber. A statement of intent to produce timber is documented in a Forest Stewardship Plan. The taxpayers submitted five photographs at the hearing before this Board (Taxpayers' Exhibit 3) showing forest growth in the majority of the easement area and regeneration up to the edge of the highway clear zone. Mr. Pfister testified that he, with the aid of his witness, Dr. Thornton Liechty, surveyed seedling counts on the least-stocked area of the subject property and counted 48 established seedlings on .36 acres, or 140-150 seedlings per acre, which would exceed the 10 percent stocking minimum prescribed by ARM 42.60.161 (1) (a) (i):

Effective January 1, 1994, the department of revenue shall use the following definitions to determine forest land classification . . . (i) is at least 10 percent stocked with softwood timber of any size on an area at least 120 feet in width; . . .¹

In summary, the taxpayers contend that the subject

¹Referencing the parcel itself.

17.64 acres is actively managed for producing timber, is stocked with timber in the specified percentages required under ARM 42.20.161 (a) (I), and is greater than 15 acres in size, as required by Section 15-44-102 (5), MCA.

DISCUSSION

The DOR's stance in this appeal seems to be that the nonforest corridor created by the presence of Highway 200, which the record indicates is approximately 140 feet in width, renders 2.767 acres of the subject property nonforest.

The authority for this position is cited to be ARM 42.20.161 (1) (a) (i), which governs the definitions to be used by the DOR in determining forest land classification. This administrative rule requires the parcel under consideration for forest land classification to be "at least 10 percent stocked with softwood timber of any size on an area at least 120 feet in width." The Board construes this rule to specify that a parcel of land under consideration for forest land designation cannot be (1) less than 10 percent stocked with softwood timber of any size; and, (2) less than 120 feet in width. Failure to meet both criteria will result in the determination that the parcel does not qualify for forest land classification.

The DOR seems to interpret this rule to mean that any nonforest area (a riverbed, a highway, etc.) which exceeds 120

feet in width disqualifies the property for classification as forest land. The Board does not agree, as stated above.

Further, the record does not contain any reference to a contention that any portion of the subject parcel is less than 10 percent stocked with softwood timber, or that its size falls below the required 120 feet in width in any area.

ARM 42.20.161 (1) (c) defines contiguous land as:

. . . land that touches or shares a common boundary or that would have shared or touched a common boundary had the lands not been separated by rivers and streams, county boundaries, local taxing jurisdiction boundaries, roads, highways, power lines and railroads. (Emphasis supplied).

Pursuant to the above-cited administrative rule, the Board finds that the subject property, consisting of 17.64 acres of contiguous land in one ownership, has not had its contiguity severed by the existence of Highway 200. Therefore, the totality of the acreage at issue, 17.64 acres, qualifies for forest land classification.

The Board notes that complete agreement does not exist regarding the exact size of the highway easement/clear zone. However, in view of the above findings, the Board finds the issue to be of little or no consequence in its determination.

In support of the DOR stance in the present appeal, Mr. Pearson made reference to a prior decision of this Board,

(Wayne R. Lowis, et al., c/o William Black v. Department of Revenue, PT-1995-57). In the Lowis appeal, this Board did uphold the DOR, but for the reason that the taxpayer did not appear at the hearing before this Board.

CONCLUSIONS OF LAW

1. The subject land qualifies for forest land classification under Section 15-44-102 (5), MCA. It is not disqualified from this classification due to the presence of Highway 200, pursuant to ARM 42.20.161 (1) (c). The cited authority for the DOR's disqualification of the subject property for forest land classification, ARM 42.20.161 (1) (a) (I), refers to the criteria which the parcel under consideration must satisfy, and does not, as the DOR seems to believe, mean that any nonforest area (a riverbed, a highway, etc.) which exceeds 120 feet in width disqualifies the property for classification as forest land.

2. The appeal of the Department of Revenue is hereby denied and the decision of the Missoula County Tax Appeal Board is hereby affirmed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject shall be entered on the

tax rolls of Missoula County by the Assessor of said County at the 1995 tax year value of reflective of forest land classification, as determined by the Missoula County Tax Appeal Board and affirmed by this Board.

Dated this 24th of June, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of June, 1997, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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